

U.S. Patent Appl. No. 09/725,178—Mockel et al.

### III. REMARKS

#### Preliminary Remarks

Based upon the foregoing amendment and following remarks, reconsideration and allowance of the present application are respectfully requested. Claims 1, 2, 5-7, and 21-33 are currently pending in the application. Claims 1, 5, 7, 27-29, and 31-33 are allowed. Claims 6, 22, 23, and 30 are under objection. Claim 2 remains at issue. This response is timely filed. The applicants request entry of the foregoing amendment, as it will either place the application for allowance or place the application in better form for an appeal.

In paragraph one of the official action, the examiner objected to claim 6 for the recitation of the phrase "wherein said nucleotide sequence or fragment thereof encode for a polypeptide having phosphoglycerate mutase activity" because this phrase allegedly lacked consistency. Claim 6 is now directed to an isolated polynucleotide consisting of the nucleotide sequence shown in SEQ ID NO: 1, or a fragment thereof wherein said nucleotide sequence and fragment thereof encode for a polypeptide having phosphoglycerate mutase activity. The applicants respectfully submit the objection to claim 6 has been overcome *in lieu* of the examiner's suggestions for which the applicants are grateful. In addition, the objection to dependent claims 22 and 33 has similarly been overcome with the amendment to claim 6. In view of the foregoing amendment, the applicants respectfully submit that the objection of claims 6, 22, and 33 has been overcome and should be withdrawn.

On page 3 of the official action, the examiner also objected to claim 30 for allegedly being in an improper multiple dependent form. Specifically, the vector of claim 30 should harbor the polynucleotides of claims 5 and 7 in the alternative rather than as a combination. Amended claim 30 is now directed to a vector that is an expression vector pXK<sub>gpmexp</sub> comprising (a) the polynucleotide of claims 5 or 7; and (b) a restriction map as set forth in Figure 2. The applicants submit claim 30 is in proper multiple dependent form, and thereby request the objection to the claim be withdrawn.

The applicants do not intend by these or any amendments to abandon subject matter of the claims as originally filed or later presented, and reserve the right to pursue such subject matter in continuing applications.

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### Patentability Remarks

#### Rejection Pursuant to 35 U.S.C. §112, First Paragraph

On page 3 of the official action, the examiner rejected claim 2 under 35 U.S.C. §112, first paragraph, for allegedly lacking proper written descriptive support. Specifically, the examiner asserted that the specification does not adequately describe the subset of genus sequences that are “naturally occurring” or isolated from coryneform bacteria so that one of skill in the art would be able to predict naturally occurring claimed sequences from all coryneform bacteria.

Amended claim 2 is directed to the isolated polynucleotide according to claim 1 wherein said polynucleotide is isolated from *Corynebacterium glutamicum*. Support for amended claim 2 can be found throughout the specification, for example, Examples 1 and 2, specifically page 21, lines 21-24. The applicants respectfully submit that the isolated polynucleotide of claim 1 was isolated from *Corynebacterium glutamicum* and the teachings of the specification provide one of skill the description to predict the claimed sequence and its source. In view of the foregoing amendment and remarks, the applicants submit that the rejection of claim 2 under 35 U.S.C. §112, first paragraph, for allegedly lacking written descriptive support, has been overcome and should be withdrawn.

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#### IV. CONCLUSION

In view of the foregoing, all pending claims are now believed to be in form of allowance, and such action is hereby solicited. If any point remains at issue which the examiner feels may be best resolved through a personal or telephone interview, please contact the undersigned at the telephone number below.

The examiner is hereby authorized to charge any fee deficiencies or credit any overpayments to the undersigned's Deposit Account No. 03-3975.

Respectfully submitted,  
PILLSBURY WINTHROP LLP



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